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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 28 1994

COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re )  
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Amendment of Part 74 of the )  
Commission's Rules with Regard )  
to the Instructional Television )  
Fixed Service )

MM Docket No. 93-24

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To: The Commission

REPLY COMMENTS OF HEARTLAND WIRELESS COMMUNICATIONS, INC.

Heartland Wireless Communications, Inc. ("Heartland"), by its attorneys and pursuant to Order and Further Notice of Proposed Rulemaking, MM Docket No. 93-24 (released July 6, 1994) ("NPRM"), hereby files its Reply Comments in the above captioned proceeding.

- I. The Commission Should Not Impose Application Caps on Wireless Cable Operators. Should the Commission Adopt a Cap or Expedited Processing Procedures, Neither a Cap Exemption Nor an Applicant's Ability To Obtain Expedited Processing Should Be Conditioned on the Wireless Cable Operator's Control of MDS Channels in a Market.

Two of the most critical issues under consideration in this rulemaking are application caps and expedited processing procedures. Heartland respectfully submits that several of the proposals offered by Commenters are seriously flawed and should be rejected by the Commission.

The Wireless Cable Association International, Inc. ("WCAI") supports an application cap. WCAI Comments at 23. WCAI, however, would exempt from the cap any ITFS application where, inter alia, the wireless cable operator holds rights for at least four MDS channels which are authorized or

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unopposed and the ITFS application proposes co-location with the MDS station. Id. at 23-24.

Heartland respectfully submits that an application cap is an ill-conceived processing tool that will not effectively deter speculative applications. The Commission should adopt several of the processing reforms identified in the NPRM to supplement the enforcement tools now at its disposal to protect the public from abusive filing practices. Strict enforcement of construction deadlines, the proposed limitation on allowable consideration for transfers of authorizations for unbuilt ITFS facilities, and spot-checks of lessee financial qualifications where the applicant is relying on the wireless cable operator to construct and operate the ITFS station provide direct and effective mechanisms to ensure that Commission resources are devoted to the consideration of bona fide applications.

The imposition of an application cap at this time is particularly ill-timed. The wireless cable industry is undergoing a major consolidation. Larger, well-financed wireless operators are pursuing aggressively channel aggregation strategies which necessarily create a need to file both new station and modification applications proposing co-location. Heartland, alone, aspires to develop over seventy markets during the next five years. A cap clearly would frustrate this goal.

A cap also would disserve those educational entities which desire to initiate distance learning opportunities but cannot do so because they lack a wireless cable partner. The Commission's ITFS comparative selection procedures ensure that the best qualified applicant prevails when competing applications are filed. An applicant which meets all eligibility criteria should not be denied the opportunity to compete for a new authorization based on the wholly speculative theory that caps would limit speculative filings. In short, a cap is a classic example of throwing out the baby with the bath water.

WCAI's proposal to limit the cap exemption to those ITFS applications where the cable operator holds rights to at least four MDS channels is particularly unjustified. Three of Heartland's eight operating systems use ITFS channels exclusively. Moreover, Heartland, which primarily develops systems in smaller markets, has launched systems with as few as five wireless channels. The Commission's recent decision to permit channel loading enhances the value of ITFS channels for wireless cable operators. Should the Commission adopt an application cap, there is no public policy rationale for crafting an exemption based on the ownership or control of MDS channels. For identical reasons, Heartland urges the Commission to reject WCAI's proposal to condition expedited processing to situations in which the wireless cable operator

holds rights to MDS channels in the market. See NPRM at para. 19 n.21.

The "Educational Parties" and American Telecasting, Inc. ("ATEL") take less restrictive approaches, and would exempt from a proposed cap applications supported by wireless cable operators who hold "any licensed ITFS or MDS channels," Educational Parties Comments at 14, or where the wireless cable operator holds rights to at least four ITFS or MDS channels. ATEL Comments at para. 15. Although these approaches better match marketplace realities, it remains bad policy. There is simply not a scintilla of evidence that supports the premise on which this policy must stand, viz, that the adoption of a cap would deter, in particular, speculative applications. While a cap is likely to lower the total number of applications filed, it would indiscriminately impede both bona fide and predatory applications.

**II. The Commission Should Defer Redefining Cochannel Interference Standards Until a More Complete Record Is Developed.**

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The comments filed in this proceeding reflect a disagreement as to whether a 28 dB D/U cochannel interference protection standard is appropriate when frequency offset and/or precision frequency control are employed. Compare ATEL Comments at para. 23 with WCAI Comments at 20-31 with Educational Parties Comments at 18 with Comments of Hardin and Associates, Inc. at 2-3. Heartland's business strategy

includes construction and operation of systems in contiguous markets. Thus, it is critically important to Heartland that the Commission base its interference standard on careful engineering studies in which the wireless cable industry has had ample opportunity for input. It is clear that the tests conducted to date, included those conducted by WCAI's Technical Committee, have not produced an industry consensus. Accordingly, the Commission should defer redefining cochannel interference standards until a more complete record is developed.

Respectfully submitted,

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